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Verna A. Bradshaw

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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN THE MATTER OF:

DOCKET NO. 93-26

BOWDON, GEORGIA

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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FREE STATE REPORTING, INC.

Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

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FEDERAL COMMUNICATIONS COMMISSION  
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MM DOCKET NO. 93-26

-----)  
In the Matter of: )

BOWDON, GEORGIA )  
-----)

The above-entitled matter came on for hearing pursuant to notice before Judge Richard L. Sippel, Administrative Law Judge, at 2000 L Street, NW, Washington, D.C., on Tuesday, April 27, 1993 at 9:00 a.m.

APPEARANCES:

On behalf of Steven Gradick:

AUDREY RASSMUSSEN, Esquire  
DAVID HILL, Esquire  
O'Conner & Hannan  
1919 Pennsylvania Avenue, NW  
Washington, D.C. 20006

On Behalf of Terry Jenks:

PATRICIA A. MAHONEY, Esquire  
KATHLEEN VICTOR, Esquire  
Fletcher, Heald & Hildreth  
1300 N. 17th Street, 11th Floor  
Arlington, VA 22209

On behalf of Mass Media Bureau

JAMES SHOOK, Esquire  
2025 N Street, N.W.  
Suite 7212  
Washington, D.C. 20554

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P R O C E E D I N G S

1  
2 JUDGE SIPPEL: We're on the record. This is the  
3 prehearing conference in accordance with my prehearing  
4 conference order. I'm going to first ask counsel for the  
5 parties to note their appearances for the record, please?

1 schedule worked out yet?

2 MR. HILL: We, we have exchanged deposition notices.  
3 May 10 as I recall was the date and hopefully any minor  
4 details can be worked out between counsel here at the end of  
5 this prehearing conference. I, I anticipate no problems.

6 JUDGE SIPPEL: All right. Ms. Mahoney, except for -- I  
7 know, I know that there is a Leslie Gradick question that has,  
8 has been raised and ruled on, but I mean aside from that --

9 MS. MAHONEY: Aside from that, I would agree with what  
10 Mr. Hill said. I expect that we would resolve this this  
11 morning.

12 JUDGE SIPPEL: All right.

13 MR. MAHONEY: We just noticed each other's client for  
14 the same time.

15 JUDGE SIPPEL: Okay -- well, I'd like to see -- I, I  
16 want a deposition schedule -- a stipulated deposition schedule

1 designation order indicated there were significant differences  
2 since these proposed transmitter sites are almost identical  
3 that there would not be any significant differences. I think  
4 the problem was that Mr. Jenks used the 1980 census and we  
5 used the 1990. I think that may have created the appearance  
6 of a disparity initially. But we do not have a common  
7 engineer and I think that's one of the things that we would  
8 want to, you know, discuss with counsel or Mr. Jenks --

9 JUDGE SIPPEL: Well --

10 MR. HILL: -- as to how to deal with the areas and pops  
11 issue. I have no objection to a stipulation and/or a common  
12 engineering exhibit along with the stipulation.

13 JUDGE SIPPEL: Well, you'll have to be sure that the  
14 Bureau counsel, Mr. Shook --

15 MR. HILL: Yeah.

16 JUDGE SIPPEL: -- is in on this too. Do you have any  
17 position on this at this point, Mr. Shook?

18 MR. SHOOK: Well, the hearing designation order, there  
19 was a third applicant and it could be that that was one of the  
20 reasons why the areas and populations question was raised.  
21 Not having looked at their proposals I have no idea off the  
22 top of my head what they look like. It's quite conceivable  
23 that it's subject to stipulation.

24 JUDGE SIPPEL: All right. Well, I'll -- Ms. Mahoney,  
25 you got anything that you want to add to that?

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1 MS. MAHONEY: No, I, I looked at them just briefly and  
2 I haven't looked at them recently and I believe there was a  
3 slight difference in area and population and think there was a  
4 difference in the population data used. I think we used a  
5 1986 update to the 1908 census and I think they used a 1990  
6 census. So I -- but I think it is something that, that we  
7 can, can work out amongst ourselves. We're certainly willing  
8 to agree to a common engineering exhibit if that's necessary  
9 or to agree to a stipulation. We would --

10 JUDGE SIPPEL: All right. My practice has always been  
11 to the -- since the issue is in there and I can understand  
12 that the -- Mr. Shook's explanation might be that -- or, or  
13 part of the reason may be that the, the concern is -- if not  
14 limited at least diluted with the, with the other party  
15 leaving. I, I certainly would accept a stipulation  
16 stipulating the issue out as long as Mr. Shook -- the Bureau  
17 is -- has no objection to it. But my common -- my practice is  
18 to require an engineering affidavit to go along with that so  
19 that I'm sure I'm getting an independent assessment. I say  
20 the only, the only exception I would make to that is if you  
21 could establish or convince Mr. Shook that the reason that --  
22 the reason for the issue has been eliminated with the other  
23 party leaving then I wouldn't require the expense of the  
24 engineering affidavit. Do you have any objection to that?

25 MR. HILL: None, Your Honor.

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1 JUDGE SIPPEL: All right. I'm going to -- I want to  
2 have this -- well, that -- the stipulation has to be -- that --  
3 - or let me rephrase that what I'm going to say. The areas  
4 and pops issue has to be resolved by stipulation as we  
5 discussed here by the 24th of May which is the, the close of  
6 discovery. And alternatively, if you -- you find that there  
7 is no need to be engineering evidence then you would be  
8 required to submit that to the Bureau by June 7th. And that  
9 -- Mr. Shook, that would give you about a month to prepare --  
10 to look at before the hearing.

11 MR. SHOOK: More than enough time.

12 JUDGE SIPPEL: Fine. All right. So you can eliminate  
13 the need for the, the formal exhibit if you can stipulate by  
14 the 24th and after that I would be looking for an exhibit to  
15 be -- or rather, that the preliminary exhibit to go to Mr.  
16 Shook by the 7th of June. And then the, the evidence itself  
17 would be presented on the admissions day which would be the  
18 6th of July. I just have one -- I have two comments I want to  
19 make on my agenda and then I'll ask the parties to address  
20 anything that they think is important. Well, actually, three  
21 things. First of all, has there been any settlement  
22 discussion? Is, is -- I mean, I understand what the new rules  
23 are with settlement now and you'd be limited just to expenses  
24 but still, has that been explored?

25 MR. HILL: It -- there have been discussions, Your

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1 Honor, and, and discussions continue but it's -- I just can't  
2 quantify this morning the likelihood of bringing that to  
3 closure. But discussions are ongoing.

4 JUDGE SIPPEL: All right. Ms. Mahoney, anything --  
5 difference or any data?

6 MS. MAHONEY: No, that's true, we've had, had many  
7 discussions and discussions are ongoing.

8 JUDGE SIPPEL: Okay. I, I, I will accept that -- this  
9 -- as, as of, as of this morning this case is, is going to  
10 hearing unless I hear from you all otherwise. I do have a --  
11 do have a requirement for a final statement to be submitted to  
12 me just before the, the hearing. That's, that's all in my  
13 schedule which you have. And I want to just -- I, I, I mean,  
14 I am -- I'm here, I am available to serve in any capacity to  
15 assist in a settlement if, you know, if, if you feel that my  
16 services would be of, of, of use. The other point I wanted to  
17 raise was with, with respect to this -- the deposition.  
18 You've, you've seen my ruling with respect to Leslie Gradick's  
19 deposition. I've denied that at this point. And I have  
20 permitted questioning of Steven Gradick with respect to Leslie  
21 Gradick's involvement. I think again that comes through  
22 pretty clear I think in my ruling. I will be available --  
23 well, let me say this. Alert me a few days before you're  
24 going to go into this deposition with Mr. Steven Gradick so I  
25 can be sure that I'm going to be available for any telephone

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1 objections that may be raised in case that does become a  
2 problem. My concern -- I want to be sure that you get -- that  
3 Ms. Mahoney, that you get everything that you're entitled to  
4 get from Mr. Steven Gradick on the concerns that you've  
5 raised. On the other hand, I'm not going to permit Leslie  
6 Gradick's deposition unless there is an issue or unless  
7 there's a reasonable cause to be shown that an issue should be  
8 added. And then, of course, you know, then he would be  
9 brought back in as a, as a, as a potential witness. And  
10 again, I want to ask Mr. Hill or urge Mr. Hill and his client  
11 that if, if it -- if, if the ruling goes against you, Mr.  
12 Hill, that, that, that I'm, I'm convinced that Leslie  
13 Gradick's deposition is necessary or his testimony is  
14 necessary, I'm going to ask you to cooperate in terms of  
15 making him available to the extent that you're able to. I  
16 know that -- I, I'm, I'm satisfied that technically subpoenas  
17 would be necessary but I'm trying to avoid that.

18 MR. HILL: Your Honor, with your caveat to the extent  
19 that we have control over, you know, or any influence over Les  
20 Gradick or Steve Gradick we will cooperate.

21 JUDGE SIPPEL: I know, I know that's a, that's a two-  
22 edged sword, so to speak.

23 MR. HILL: Yeah.

24 JUDGE SIPPEL: I mean, I, I, I -- well, let me say  
25 this: that I will not draw any adverse inferences against any

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1 of these issues against your client because Leslie Gradick is  
2 cooperating, that's for sure.

3 MR. HILL: All right.

4 JUDGE SIPPEL: So I, I -- well, in any event -- I think  
5 that covers everything that I was concerned about this  
6 morning. Mr. Shook, does the Bureau have anything else they  
7 want to talk about?

8 MR. SHOOK: No, Your Honor.

9 JUDGE SIPPEL: There is the mot-- oh, I, I, I'm sorry.  
10 Let me, let me, let me raise this too with counsel. There is  
11 a motion to compel local. local publication that came across

1 know, --

2 MR. HILL: All right.

3 JUDGE SIPPEL: -- address it at that time. Meantime,  
4 of course, if you work anything out amongst yourselves then  
5 you can file a stipulation just telling me it's taken care of.  
6 And, of course, with, your know -- check with Mr. Shook on it  
7 too. Have you seen the order yet, Mr. Shook?

8 MR. SHOOK: The motion came across my desk this  
9 morning.

10 JUDGE SIPPEL: Okay. Well, I don't think we need to  
11 resolve it this morning. It's not -- but it's. it's. it's --

1 engineering stipulation. But there seems to be some confusion  
2 that's created, as you said, some minor problems. We've been  
3 able to work them out among counsel so far, but any guidance  
4 on that point I think would be helpful. And stated another  
5 word -- and, and try to state it simply, our view of, of the  
6 filing requirements and the timing requirements is that if a  
7 date certain is specified in an order from Your Honor by  
8 operation of the rules that's the date that that event is to  
9 occur. And if it's exchange of documents, exchange of a  
10 standard integration statement on that particular date, that  
11 means that's the date we file it with the FCC secretary's  
12 office and serve it on all other parties; we don't add three  
13 days from that date and then file it and serve it on the other  
14 parties. And any guidance on Section 1.4 as applied to  
15 various procedural dates would be helpful.

16 MS. MAHONEY: Your Honor, I don't think that in any  
17 proceeding I've ever been in I've ever suggested that when a  
18 date certain was specified by the judge that parties were to  
19 get three days for mailing. I think Section 1.4 speaks for  
20 itself and the other rules that, that have exceptions to 1.4  
21 or do not have exceptions to 1.4 it's when time runs from an  
22 action that somebody else takes that you run it -- when time  
23 runs for service, that Section 1.4's three days for mailing  
24 becomes applicable and I don't think that my interpretations  
25 have been wrong at, at any point, and the one point when I had

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1 a question I sought advice from your assistant. And I, I  
2 really don't think that this is a matter that needs  
3 clarification; I think clarification may confuse it more  
4 because I think the rules speak for themselves.

5 MR. HILL: Your Honor, certainly I do not want to add  
6 confusion and with counsel's statement I withdraw my request  
7 for clarification.

8 JUDGE SIPPEL: All right. I --

9 MR. HILL: We will, we will live with the rules.

10 JUDGE SIPPEL: Yeah, I think it's best to leave that  
11 just as stated and nothing more to be added to it. Very well.  
12 Then -- nothing more to accomplish this morning we're in  
13 recess until the 6th of July when we'll have our admissions  
14 session. And as I say, I am -- you know, upon reasonable  
15 notice I am available to accommodate anything on settlement or  
16 -- settlement or, or, or discovery that comes up.

17 MR. HILL: Thank --

18 MS. MAHONEY: Your Honor, I, I would like to clarify  
19 one point if it's not too late. When you asked about document  
20 production, I, I do not intend to, to further -- well, I -- if  
21 I do not further press for documents that we requested, that

1 JUDGE SIPPEL: When you talk about objections you mean  
2 on, on --

3 MS. MAHONEY: On terms of relevancy.

4 JUDGE SIPPEL: Oh, relevancy?

5 MS. MAHONEY: Right.

6 JUDGE SIPPEL: Well, if you feel that there has been a  
7 withholding of documents which are relevant to, to any of the  
8 issues, if anybody -- I mean, this goes across-the-board, you,  
9 you, you -- your know, certainly you'd be well advised to get  
10 a motion and pretty properly so I can get -- we can get that  
11 resolved. The difficulty is going to be -- and, and well --  
12 let me, let me say this: I don't want -- I would make a  
13 further clarification to that. It would make sense perhaps,  
14 you can see it better than I can, but it would, it would seem  
15 to me that it would make sense to finish the, the depositions  
16 first and then you can -- and questions can be asked --  
17 focused questions can be asked with respect to documents  
18 assuming that the witness would have knowledge of relevant  
19 documents.

20 MS. MAHONEY: That was my intention, Your Honor.

21 JUDGE SIPPEL: Oh, okay, fine, yeah.

22 MS. MAHONEY: I just did not want my, my characterizing  
23 my response as fine to be assumed that I had accepted  
24 objections.

25 JUDGE SIPPEL: Okay. Well, I, I, I -- no, I, I accept

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1 that and I -- you know, I take that under advisement. But I  
2 think I've been doing this long enough to know that anything  
3 can happen in depositions and that's what the depositions are  
4 for, to explore all that. So -- I'm not going to -- anybody  
5 that can show relevance anytime before we go to hearing and a,  
6 and a legitimate reason as to why they hadn't moved before  
7 that, you're going to get the discovery. I'll work with you  
8 on that. But it's a good point. Anything more?

9 MR. HILL: Nothing, Your Honor.

10 MS. MAHONEY: No, sir.

11 JUDGE SIPPEL: Then we're in recess until the 6th of  
12 July. Thank you very much.

13 (Whereupon, conference adjourned at 9:13 a.m.,  
14 on April 27, 1993.)  
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IN THE MATTER OF BOWDON, GEORGIA

**Name**

MM DOCKET NO. 93-26

**Docket No.**

WASHINGTON, D.C.

**Place**

APRIL 27, 1993

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 14, inclusive, are the true, accurate and complete transcript prepared from the reporting by JEEFREY M. YEATMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or